

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO,
et al.,

(Jointly Administered)

Debtors.¹
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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3566-LTS

THE EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,

Debtor.
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ORDER REQUIRING FURTHER SUBMISSION IN SUPPORT OF URGENT MOTION OF CERTAIN
SECURED CREDITORS OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF
THE COMMONWEALTH OF PUERTO RICO TO FILE UNDER SEAL UNREDACTED EXPERT REPORTS

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

On June 24, 2019, the Court granted the *Urgent Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico to File Under Seal Unredacted Expert Reports* (Docket Entry No. 586 in Case No. 17-3566 and Docket Entry No. 7589 in Case No. 17-3283, the “Urgent Motion”). The Court’s order granting the Urgent Motion “reserve[d] the right to require a further submission demonstrating that the considerations underlying the confidentiality designation are sufficient to overcome the public right of access.” (Docket Entry No. 588 in Case No. 17-3566 and Docket Entry No. 7598 in Case No. 17-3283).

The public has a “general right to inspect and copy public records and documents, including judicial records and documents.” Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 598 (1978). That right is “a principle long-recognized in the common law and buttressed by the First Amendment” and is recognized as having “special importance in the bankruptcy arena, as unrestricted access to judicial records fosters confidence among creditors regarding the fairness of the bankruptcy system.” Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Glob. Corp.), 422 F.3d 1, 7 (1st Cir. 2005) (quoting In re Crawford, 194 F.3d 954, 960 (9th Cir. 1999)). That right has been codified with respect to cases under the Bankruptcy Code, 11 U.S.C. § 107(a), and incorporated in these Title III cases by Section 301(a) of PROMESA, 48 U.S.C. § 2161(a). Section 107 of the Bankruptcy Code therefore sets forth the “framework for determining whether a paper filed in a bankruptcy case is available to the public or subject to protection.” In re Gitto Glob. Corp., 422 F.3d at 7-8; see also In re Rivera, 524 B.R. 438, 442 (Bankr. D.P.R. 2015) (noting that Section 107(b) of the Bankruptcy Code creates “narrow statutory exceptions to the public access presumption”). Rule 9018 of the Federal Rules of Bankruptcy Procedure “provides the procedure for invoking the court’s power under § 107 of the [Bankruptcy] Code.” Fed. R. Bankr. P. 9018 advisory committee’s note.

The parties are directed to file a joint memorandum of law, with any factual submissions in the form of declarations or affidavits, by **July 16, 2019 at 5:00 p.m. (Atlantic Standard Time)**, as to why the Expert Reports (as defined in the Urgent Motion) should remain under seal in light of the above principles, Section 107 of the Bankruptcy Code, and Bankruptcy Rule 9018.

SO ORDERED.

Dated: July 2, 2019

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge